

CHAPTER 9

Statewide Personnel System

	Beginning Section
In General [Repealed]	25-9-1
Personnel Administration System	25-9-101
Protection of Public Employee From Reprisal For Giving Information to Investigative Body or Agency	25-9-171
Veteran's Preference	25-9-301

IN GENERAL

[Repealed]

§§ 25-9-1 through 25-9-11. [Codes, 1942, §§ 8935-01 thru 8935-03; Laws, 1970, ch. 394, §§ 1-3] **Repealed** by Laws, 1980, ch. 303, § 17, eff from and after February 1, 1981.

Editor's Note—

Former §§ 25-9-1 through 25-9-39 pertained to the Mississippi classification law.

§ 25-9-13. [Codes, 1942, § 8935-03; Laws, 1970, ch. 394, § 3; 1980, ch. 560, § 7] **Repealed** by Laws, 1980, ch. 303, § 17, eff from and after February 1, 1981.

Editor's Note—

Former §§ 25-9-1 through 25-9-39 pertained to the Mississippi classification law.

§§ 25-9-15 through 25-9-39. [Codes, 1942, §§ 8935-03 thru 8935-12; Laws, 1970, ch. 394, §§ 3-12] **Repealed** by Laws, 1980, ch. 303, § 17, eff from and after February 1, 1981.

Editor's Note—

Former §§ 25-9-1 through 25-9-39 pertained to the Mississippi classification law.

§§ 25-9-41 through 25-9-47. [En Laws, 1976, ch. 377, §§ 1-4] **Repealed** by Laws, 1980, ch. 303, § 17, eff from and after February 1, 1981.

Editor's Note—

Former §§ 25-9-41 through 25-9-47 pertained to the establishment of a coordinated merit system.

§ 25-9-49. [En Laws, 1978, ch. 520, § 7] **Repealed** by Laws, 1980, ch. 303, § 17, eff from and after February 1, 1981.

Editor's Note—

Former § 25-9-49 regulated the employment of public employees as consultants or employees by state agencies subject to the Mississippi Classification Act of 1970 (chapter 9 of title 25, Mississippi Code of 1972).

§ 25-9-101 PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

PERSONNEL ADMINISTRATION SYSTEM

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§ 25-9-101. Purpose of chapter.

It is the purpose of this chapter to establish in the State of Mississippi a system of personnel administration based on sound methods of personnel administration governing the establishment of employment positions, classification of positions and the employment conduct, movement and separation of state employees; to build a career service in government which will attract, select and retain the best persons, with incentives in the form of equal opportunities for initial appointment and promotions in the state service; and to establish a system of personnel management that will ensure the effective and efficient use of employees in the state service.

SOURCES: Laws, 1980, ch. 303, § 1, eff from and after passage (approved February 8, 1980).

Cross references—

Civil service system for municipal employment, see §§ 21-31-1 et seq.

Duty of the state personnel board to report to the state legislature annually with recommen-

dations on salary increases and amounts for all state and county elected officials and state appointed officials, see § 25-3-71.

Employees of Mississippi Ethics Commission being excluded from provisions of state personnel system, see § 25-4-15.

Veterans' preference in appointments by the state personnel board, see §§ 25-9-301 to 25-9-305.

Establishment by the state personnel board of rules and regulations regarding veterans' preference, see § 25-9-305.

Appointment, compensation, and discharge of certain personnel under state superintendent of education, see § 37-3-13.

Applicability of this chapter to employees of the division of vocational technical education in the state department of education, see § 37-3-25.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, and powers and duties of Department of Human Services, see § 37-33-163.

Applicability of the state personnel system to employees of the state medical examiner, see § 41-61-7(1).

Application of this section to salary and compensation of employees of Department of Human Services, see § 43-1-2.

Applicability of the state personnel system to the highway safety patrol, see § 45-3-7.

Research and Practice References—

16 Am Jur 2d, Civil Service §§ 1 et seq.

67 CJS, Officers §§ 49-62, 64, 65.

§ 25-9-103. Principles applicable to administration of state personnel system.

The state personnel board herein established shall administer a state personnel system in accordance with the following principles:

- (a) To recruit, select and advance employees on the basis of their relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment;
- (b) To provide equitable and adequate compensation;
- (c) To train employees, as needed, to assure high quality performance;
- (d) To retain employees on the basis of the adequacy of their performance, to correct inadequate performance, and to separate employees whose inadequate performance cannot be corrected;
- (e) To assure fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, national origin, sex, religious creed, age or physical disability;
- (f) To assure that employees are free from coercion for partisan or political purposes and to prohibit employees from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office;
- (g) To provide authority for the establishment and abolishment of employment positions within the departments, agencies and institutions covered under the provisions of this chapter.

SOURCES: Laws, 1980, ch. 303, § 2(1), eff from and after February 1, 1981.

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Cross references—

Prohibition against discrimination as to person seeking employment in state service, or employed in state service, on basis of race, color, religion, sex, national origin, age or handicap, see § 25-9-149.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Research and Practice References—

15A Am Jur 2d, Civil Service §§ 1-4, 8, 38.

Annotations—

What constitutes employment discrimination on basis of "marital status" for purposes of state civil rights laws. 44 ALR4th 1044.

Award of liquidated damages under § 7 of Age Discrimination in Employment Act of 1967 (29 USCS § 626) for "willful" violations of the Act. 55 ALR Fed 604.

Proving that discharge was because of age, for purposes of Age Discrimination in Employment Act (29 USCS §§ 621 et seq.). 58 ALR Fed 94.

Who is "employee" within meaning of Age Discrimination in Employment Act (29 USCS §§ 621-634). 69 ALR Fed 700.

Award of "front pay" under § 7 of Age Discrimination in Employment Act of 1967 (29 USCS § 626). 74 ALR Fed 745.

Reinstatement as remedy for discriminatory discharge or demotion under Age Discrimination in Employment Act (29 USCS §§ 621 et seq.). 78 ALR Fed 575.

Actions under Age Discrimination in Employment Act (29 USCS §§ 621-634) challenging hiring or retirement practices in law enforcement employment. 79 ALR Fed 373.

Circumstances which warrant finding of constructive discharge in cases under Age Discrimination in Employment Act (29 USCS §§ 621 et seq.). 93 ALR Fed 10.

Public employee's right of free speech under Federal Constitution's First Amendment—Supreme Court cases. 97 L Ed 2d 903.

JUDICIAL DECISIONS

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursu-

ant to § 25-9-127(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-115, 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. *Gill v Mississippi Dept. of Wildlife Conservation* (1990, Miss) 574 So 2d 586.

§ 25-9-105. Consolidation of agencies and employees into state personnel system.

It is the intent of this chapter to consolidate into one (1) state personnel system all agencies and employees now administered by the Mississippi Classification Commission, agencies and employees now administered by the Mississippi Coordinated Merit System Council, and such other agencies and employees except as excluded by this chapter. The state personnel board established herein shall assume the total functions of personnel administration services (a) for those agencies and positions now required and operating

under merit system rules due to federal statutory and regulatory provisions or state law, and (b) for all state agencies, departments and institutions except as excluded by this chapter. Provided, however, that state agencies which are not required by law to operate under merit system rules may request an exemption from the applicant selection process by specific job class or on an agency-wide basis when such exemption is justifiable. No statute or executive order in effect February 1, 1981, or enacted or amended after February 1, 1981, shall be construed to exempt positions from the provisions of this chapter, unless such positions are clearly excluded by section 25-9-107 as nonstate service.

SOURCES: Laws, 1980, ch. 303, § 2(2), eff from and after February 1, 1981.

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-107. Definitions.

The following terms, when used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

- (a) "Board" shall mean the State Personnel Board created under the provisions of this chapter.
- (b) "State service" shall mean all employees of state departments, agencies and institutions as defined herein, except those officers and employees excluded by this chapter.
- (c) "Nonstate service" shall mean the following officers and employees excluded from the state service by this chapter. The following are excluded from the state service:
 - (i) Members of the State Legislature, their staffs and other employees of the legislative branch;
 - (ii) The Governor and staff members of the immediate office of the Governor;
 - (iii) Justices and judges of the judicial branch or members of appeals boards on a per diem basis;
 - (iv) The Lieutenant Governor, staff members of the immediate office of the Lieutenant Governor and officers and employees directly appointed by the Lieutenant Governor;
 - (v) Officers and officials elected by popular vote and persons appointed to fill vacancies in elective offices;
 - (vi) Members of boards and commissioners appointed by the Governor, Lieutenant Governor or the State Legislature;
 - (vii) All academic officials, members of the teaching staffs and employees of the state institutions of higher learning, the State Board for Community and Junior Colleges, and community and junior colleges;

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- (viii) Officers and enlisted members of the National Guard of the state;
- (ix) Prisoners, inmates, student or patient help working in or about institutions;
- (x) Contract personnel; provided, that any agency which employs state service employees may enter into contracts for personal and professional services only with the prior written approval of the State Personnel Director. The State Personnel Director shall disapprove such contracts where the services to be provided could reasonably be performed by an employee in an authorized employment position. Prior to paying any warrant for such contractual services, the auditor of public accounts, or the successor to those duties, shall determine whether the contract involved was for personal or professional services, and, if so, shall determine whether it was properly submitted to the state personnel director and approved; provided, however, that physicians, dentists, architects, engineers, veterinarians, attorneys and utility rate experts who are employed for the purposes of professional services, and other specialized technical services related to facilities maintenance, shall be excluded from the provisions of this paragraph.
- (xi) Part-time employees; provided, however, part-time employees shall only be hired into authorized employment positions classified by the board, shall meet minimum qualifications as set by the board, and shall be paid in accordance with the variable compensation plan as certified by the board;
- (xii) Persons appointed on an emergency basis for the duration of the emergency; the effective date of the emergency appointments shall not be earlier than the date approved by the State Personnel Director, and shall be limited to thirty (30) working days. Emergency appointments may be extended to sixty (60) working days by the State Personnel Board;
- (xiii) Physicians, dentists, veterinarians and attorneys, while serving in their professional capacities in authorized employment positions who are required by statute to be licensed, registered or otherwise certified as such, provided that the State Personnel Director shall verify that the statutory qualifications are met prior to issuance of a payroll warrant by the auditor;
- (xiv) Personnel who are employed and paid from funds received from a federal grant program which has been approved by the Legislature or the Department of Finance and Administration whose length of employment has been determined to be time-limited in nature. This paragraph shall apply to personnel employed under the provisions of the Comprehensive Employment and Training Act of 1973, as amended, and other special federal grant programs which are not a part of regular federally funded programs wherein appropriations and employment positions are appropri-

ated by the legislature. Such employees shall be paid in accordance with the variable compensation plan and shall meet all qualifications required by federal statutes or by the Mississippi Classification Plan;

- (xv) The administrative head who is in charge of any state department, agency, institution, board or commission, wherein the statute specifically authorizes the Governor, board, commission or other authority to appoint said administrative head; provided, however, that the salary of such administrative head shall be determined by the state personnel board in accordance with the variable compensation plan unless otherwise fixed by statute;
 - (xvi) The State Personnel Board shall exclude top level positions if the incumbents determine and publicly advocate substantive program policy and report directly to the agency head, or the incumbents are required to maintain a direct confidential working relationship with a key excluded official. Provided further, a written job classification shall be approved by the board for each such position, and positions so excluded shall be paid in conformity with the variable compensation plan; and
 - (xvii) Employees whose employment is solely in connection with an agency's contract to produce, store or transport goods, and whose compensation is derived therefrom.
- (d) "Agency" means any state board, commission, committee, council, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, department, unit or the head thereof, is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof.

SOURCES: Laws, 1980, ch. 303, § 3; 1981, ch. 504, § 10; 1984, ch. 488, § 171; 1990, ch. 429, § 1, eff from and after July 1, 1990.

Editor's Note—

Section 341, ch. 488, Laws, 1984, provides as follows:

"Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor," and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

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Cross references--

- Abolishment of agency, see § 5-11-1.
- Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.
- Authority of executive director of any agency of state government to employ staff and expend funds authorized to agency, see § 7-17-5.
- Agency for budgetary purposes and organizational purposes, see § 7-17-11.
- Persons and positions subject to municipal civil service, see § 21-31-13.
- Applicability of definitions from this section to provisions regarding vacation time and sick leave, see §§ 25-3-91, 25-3-97 and 25-3-101.
- Appointing authority of nonstate service agency, as defined in this section, developing rules for maintaining vacation and sick leave records, see § 25-3-97.
- Prohibition against discrimination as to person seeking employment in state service, or employed in state service, on basis of race, color, religion, sex, national origin, age or handicap, see § 25-9-149.
- Protection of public employee from reprisal for giving information to investigative body or agency, see § 25-9-171.
- Provision that, for purposes of cafeteria fringe benefit plan provisions, the term "eligible employee" includes state agency officers and employees whether or not engaged in state service, as defined in this section, see § 25-17-1.
- Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.
- Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.
- Applicability of this section to the director and other administrative heads of the division of medicaid in the office of the governor, see § 43-13-107.

Research and Practice References--

- 15A Am Jur 2d, Civil Service §§ 8-26.
- 67 CJS, Officers §§ 49-62, 64, 65

§ 25-9-109. State personnel board members, terms of office, qualifications, vacancies.

There is hereby created a board of five (5) members to be known as the state personnel board to be appointed by the governor as hereinafter provided, with the advice and consent of the senate.

Gubernatorial appointees serving on the board on June 30, 1984, shall continue to serve on the board, and the terms of such members shall be extended as follows:

- (a) The term of the member serving from the third supreme court district shall expire on June 30, 1986.
- (b) The term of the member serving from the state at large shall expire on June 30, 1987.
- (c) The term of the member serving from the first supreme court district shall expire on June 30, 1988.
- (d) The term of the member serving from the second supreme court district shall expire on June 30, 1989.

For a term to begin on July 1, 1984, the governor shall appoint one (1) member from the state at large for a term of one (1) year.

Upon the expiration of the foregoing terms, such appointments shall be made by the governor from the appropriate geographical area for terms of five (5) years beginning July 1 of the year of appointment.

An appointment to fill a vacancy, other than by expiration of a term of office, shall be made by the governor for the balance of the unexpired term.

All appointees shall have at least a bachelor's degree in public administration, personnel management or the equivalent, or, in the alternative, shall have a graduate degree and be a person knowledgeable in management and professional development, with at least three (3) years' actual experience therein.

SOURCES: Laws, 1980, ch. 303, § 4(1); 1984, ch. 488, § 304, eff from and after July 1, 1984.

Cross references—

Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

Appointment, qualifications and term of office of members of municipal civil service commission, see § 21-31-5.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Applicability of State Personnel Board's rules and regulations to employee transfers occasioned by assumption of authority and duties of State Textbook Procurement Commission by State Board of Education, see § 37-43-2.

Research and Practice References—

15A Am Jur 2d, Civil Service §§ 8-12.

67 CJS, Officers §§ 49-62, 64, 65

81A CJS, States § 137.

1983 Mississippi Supreme Court Review: State legislators serving on state executive boards. 54 Miss LJ 46, March 1984.

JUDICIAL DECISIONS

§ 57-1-344, which regulates the Board of Economic Development, § 25-11-15, which regulates the Board of Trustees of the Public Employees' Retirement System, § 25-53-7, which regulates the Central Data Processing Authority, § 25-9-109, which regulates the State Personnel Board, § 43-13-107, which regulates the Medicaid Commission, § 29-5-1, which regulates the Capitol Commission, § 49-5-61, which regulates the Wild Life Heritage Committee, and § 47-5-12, which regulates the Board of Corrections, are unconstitutional, insofar as they create executive boards and commissions with legislative members, in violation of Miss Const Art 1 § 2, and, accordingly, named legislators could not constitutionally perform any of the executive functions of those boards and commissions; moreover, §§ 27-103-1, 29-5-1, 57-1-3, 43-13-107, 25-53-7, 25-9-109, and 49-5-61, are unconstitutional insofar as they mandate legislative appointments to executive offices. *Alexander v State* (1983, Miss) 441 So 2d 1329.

§ 25-9-111. Officers of board, regulations as to meetings.

(1) There shall be a chairman and vice chairman of the board, elected by and from the membership of the board. The board shall adopt rules and regulations governing times and places for meetings, and governing the manner of conducting its business. Any member who shall not attend three (3) consecutive regular meetings of the board shall be subject to removal by a majority vote of the board members.

(2) The lieutenant governor may designate two (2) senators and the speaker of the house of representatives may designate two (2) representatives to attend any meeting of the state personnel board. The appointing authorities may designate alternate members from their respective houses to serve when the regular designees are unable to attend such meetings of

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the board. Such legislative designees shall have no jurisdiction or vote on any matter within the jurisdiction of the board. For attending meetings of the board, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the legislature is not in session; however, no per diem and expenses for attending meetings of the board will be paid while the legislature is in session. No per diem and expenses will be paid except for attending meetings of the board without prior approval of the proper committee in their respective houses.

SOURCES: Laws, 1980, ch. 303, § 4(2)(3); 1984, ch. 488, §§ 305 and 306, eff from and after July 1, 1984.

Cross references—

Affect of any member of a board, commission, council or authority changing domicile after appointment, see § 7-13-9.

For similar provision with respect to municipal civil service system, see §§ 21-31-13 et seq.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-113. Regular meetings; compensation and expenses of members.

The state personnel board shall prescribe the general policies by which the state personnel system shall be administered. The board shall hold regular meetings at least once each month and may hold additional meetings as may be required for the proper discharge of its duties. Members of the board shall receive a per diem as is authorized by law for each day spent in actual discharge of their duties and shall be reimbursed for mileage and actual expenses incurred in the performance of their duties in accordance with requirements of section 25-3-41, Mississippi Code of 1972. No board member may incur per diem, travel or other expenses unless previously authorized by vote at a meeting of the board, which action shall be recorded in the official minutes of said meetings. All expenses of the board incurred in the administration of this act shall be paid from such funds as may be appropriated by the legislature for such purpose.

SOURCES: Laws, 1980, ch. 303, § 5(1); 1980, ch. 560, § 30, eff from and after passage (approved May 26, 1980).

Cross references—

For provision authorizing uniform per diem compensation of officers and employees of state boards, commissions and the like, see § 25-3-69.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Research and Practice References—

15A Am Jur 2d, Civil Service §§ 8-26

81A CJS, States § 151.

§ 25-9-115. Specific duties and functions of board.

It shall be the specific duty and function of the State Personnel Board to:

- (a) Represent the public interest in the improvement of personnel administration in the state departments, agencies and institutions covered by the State Personnel System;
- (b) Determine appropriate goals and objectives for the State Personnel System and prescribe policies for their accomplishment, with the assistance of the Mississippi Personnel Advisory Council;
- (c) Adopt and amend policies, rules and regulations establishing and maintaining the State Personnel System. The rules and regulations of the Mississippi Classification Commission and the Mississippi Coordinated Merit System Council serving federal grant-aided agencies in effect on February 1, 1981, shall remain in effect until amended, changed, modified or repealed by the board;
- (d) Ensure uniformity in all functions of personnel administration in those agencies required to comply with the provisions of this chapter;
- (e) Appoint an employee appeals board, consisting of three (3) hearing officers, for the purpose of holding hearings, compiling evidence and rendering decisions on employee dismissals and other personnel matters as provided for in Sections 25-9-127 through 25-9-131, Mississippi Code of 1972;
- (f) Assure uniformity in the administration of state and federal laws relating to merit administration;
- (g) Establish an annual budget covering all the costs of board operations;
- (h) With the assistance of the Mississippi Personnel Advisory Council, promote public understanding of the purposes, policies and practices of the State Personnel System and advise and assist the state departments, agencies and institutions in fostering sound principles of personnel management and securing the interest of institutions of learning and of civic, professional and other organizations in the improvement of personnel standards under the State Personnel System;
- (i) Recommend policies and procedures for the establishment and abolishment of employment positions within state government and develop a system for the efficient use of personnel resources;
- (j) Cooperate with state institutions of higher learning in implementing a career management program in state agencies for graduate students in public administration in order to provide state government with a steady flow of professional public managerial talent;
- (k) Prescribe rules which shall provide that an employee in state service is not obliged, by reason of his employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so;

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- (l) Prescribe rules which shall provide that an employee in state service shall not use his official authority or influence to coerce the political action of a person or body;
- (m) Annually report to the Governor and Legislature on the operation of the State Personnel System and the status of personnel administration in state government;
- (n) Require submission and approve organization and staffing plans of departments and agencies in state and nonstate service on such forms and according to such regulations as the board may prescribe to control and limit the growth of subordinate executive and administrative units and positions and to provide for agency staff reorganization without prior board approval when authority to reorganize has been delegated to an agency as provided in paragraph (p);
- (o) In coordination with appointing authorities, set the annual salaries of those appointed officials whose salaries are not otherwise set by statute who work on a full-time basis in the capacity of agency head, executive director or administrator of any state department, agency, institution, board or commission under the jurisdiction of the State Personnel Board as provided in Section 25-9-101, et seq., Mississippi Code of 1972, in conformity with the State Personnel Board's compensation plan;
- (p) Authorize the director to enter into formal agreements with department executive directors and agency directors in which employment positions within their agencies may be reallocated and organization charts amended without prior State Personnel Board approval; provided, however, that such agreements shall be revocable by the State Personnel Board and continuation shall be contingent upon the reallocations and reorganizations being conducted in accordance with rules and regulations promulgated by the State Personnel Board.

In the event the State Personnel Board has delegated reallocation authority to an agency, this delegation does not remove the requirement that agencies submit personal services budget requests each fiscal year for the purpose of preparing personal services continuation budget projections. Such budget requests shall be prepared in accordance with the policies, rules and regulations promulgated by the Department of Finance and Administration, the Legislative Budget Office and the State Personnel Board. Prior to making any reallocation or reorganization effective, each appointing authority who has entered into an agreement as provided in this paragraph (p) shall certify to the State Personnel Board that the total annualized cost of any reallocation or reorganization, shall be equal to or less than the cost savings generated through downward reallocation or position abolishment of vacant positions.

The personnel board shall maintain a record of every personnel

transaction executed under authority delegated pursuant to this paragraph (p) and shall annually report the total cost of these transactions, by agency, to the Legislative Budget Office and the Department of Finance and Administration.

The State Personnel Board shall prescribe rules requiring the State Personnel Director to perform a compliance audit and evaluation of personnel transactions executed under authority delegated pursuant to this paragraph (p) and to publish a report of the audit listing exceptions taken by the State Personnel Director not later than the first of October each year. In the event the State Personnel Board determines that an agency has misclassified an employee or position as a result of this delegated authority, the State Personnel Board shall be authorized to correct such misclassification regardless of the state service status of the employee holding such position. Authority to correct such misclassifications of filled positions shall be limited to one (1) year from the date which the State Personnel Board receives written notice of the reallocation;

- (q) Require that if an employment position has been determined to be in need of reallocation from one occupational class to another, the employee occupying the position shall meet the minimum qualifications for the occupational class to which the position is being reallocated in order for the position to be eligible for the reallocation. However, when a reallocation is based upon an agency reorganization due to documented funds constraints, documented change in agency function, or legislative mandate, a position may be reallocated with prior approval of the State Personnel Board.

(r) [Repealed July 1, 1990]

- (s) Paragraphs (a) through (q) of this section shall stand repealed from and after July 1, 1992.

SOURCES: Laws, 1980, ch. 303, § 5(2), (3); 1980 ch. 560, § 30; 1981, ch. 504, § 11; 1989, ch. 533, § 2; 1990, ch. 527, § 1, eff from and after passage (approved April 2, 1990).

Cross references—

Promulgation of rules for administration of vacation and sick leave provisions, see § 25-3-101

Position audits to determine compliance with organization and staffing plans, see § 25-9-133.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Approval of compensation of executive director of Mississippi Industries for the Blind, see § 43-3-103.

State Personnel Board's determination of salary of all officers employed to enforce seafood conservation provisions under §§ 49-15-1 et seq., see § 49-15-15.

Applicability of rules and regulations of the state personnel board to compensation of nonenforcement employees of the Mississippi Commission on Wildlife Conservation (now the commission on wildlife, fisheries and parks), see § 49-15-15(3)(f).

Applicability of rules and regulations of state personnel board to employment of personnel by state board of funeral service, see § 73-11-49.

Requirement that salary of the executive director of state board of pharmacy be approved by state personnel board, see § 73-21-79

Duty of board to set salary of executive director of public utilities staff, see § 77-2-7.

§ 25-9-115 PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

Research and Practice References—

15A Am Jur 2d, Civil Service §§ 10-12.

Annotations—

Validity, construction, and effect of state statutes restricting political activities of public officers or employees. 51 ALR4th 702.

JUDICIAL DECISIONS

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursu-

ant to § 25-9-127(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-115, 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. *Gill v Mississippi Dept. of Wildlife Conservation* (1990, Miss) 574 So 2d 586.

§ 25-9-116. Suspension of hiring, promotion and other reclassifications.

Upon recommendation of the state fiscal management board, after a determination that the state revenue and expenditure requires such action the state personnel board may institute an immediate suspension of all hirings, promotions, reclassifications, reallocations and pay grade realignments until such time as the state fiscal management board shall recommend that such action is no longer required.

SOURCES: Laws, 1981, ch. 504, § 14; 1984, ch. 488, § 172, eff from and after July 1, 1984.

Editor's Note—

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Annotations—

Public employee's right of free speech under Federal Constitution's First Amendment—Supreme Court cases 97 L Ed 2d 903

§ 25-9-117. Mississippi Personnel Advisory Council; membership; duties; expenses.

(1) There is hereby created and established the Mississippi Personnel Advisory Council, which shall consist of the personnel directors of five (5) major state agencies to be appointed by the governor. Members of the council shall serve for a term concurrent with that of the governor.

(2) It is made the duty of the Mississippi Personnel Advisory Council and it is hereby granted the authority to:

- (a) Advise the state personnel board in the development of comprehensive policies and programs for the improvement of public employment in the state;
 - (b) Assist in the formulation of rules, regulations and standards relating to the state personnel system; and
 - (c) Assist in the promotion of public understanding of the purposes, policies and practices of the state personnel system.
- (3) Members of the council shall receive no compensation, but shall be reimbursed for their actual and necessary expenses, including food, lodging and mileage as authorized by section 25-3-41, Mississippi Code of 1972, required for attendance at council meetings.

SOURCES: Laws, 1980, ch. 303, § 6, eff from and after passage (approved February 8, 1980).

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-119. State personnel director; selection; qualifications; duties.

(1) There is hereby created the position of the State Personnel Director who shall be selected by the State Personnel Board, with the advice and consent of the Senate. The director shall have at least a master's degree in business administration, personnel management or the equivalent and shall have not less than five (5) years' experience therein. His salary shall be in accordance with the Mississippi Compensation Plan. The State Personnel Director shall serve at the will and pleasure of the State Personnel Board.

(2) The duties and responsibilities of the director shall be:

- (a) To serve as executive secretary to the board, to attend meetings as directed by the board and to provide such professional, technical and other supportive assistance as may be required by the board in the performance of its duties;
- (b) Consistent with board policy, to administer the operations of the State Personnel System and to otherwise act in the capacity of chief executive officer to the State Personnel Board;
- (c) To submit for board approval proposed rules and regulations which shall require a uniform system of personnel administration within all agencies included in this chapter. Such rules and regulations, when approved by the board, shall be binding upon the state departments, agencies and institutions covered by this chapter and shall include provisions for the establishment and maintenance of classification and compensation plans, the conduct of examinations, employee recruiting, employee selection, the certification of eligible persons, appointments, promotions, transfers, demotions, separations, reinstatement, appeals, reports of performance, payroll certi-

§ 25-9-119 PUBLIC OFFICERS, EMPLOYEES, AND RECORDS

fication, employee training, vacation and sick leave, compensatory leave, administrative leave, standardized record keeping forms and procedures for leave earned, accrued and used, and all other phases of personnel administration. Such rules and regulations, or modifications thereto, as are approved by the State Personnel Board shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives at least sixty (60) days prior to their effective date. The secretary and the clerk shall immediately forward copies of the rule or rules to the members of the Senate Fees, Salaries and Administration Committee, the members of the House Fees and Salaries of Public Officers Committee, the Lieutenant Governor, the Speaker of the House of Representatives and the Governor. The respective committees may submit comments to the board regarding such rules and regulations prior to their effective date;

- (i) Compensation plans and modifications thereto promulgated under rules and regulations shall become effective as adopted, upon appropriation therefor by the State Legislature;
- (ii) The director and the board shall provide for:
 - (A) Cost-of-living adjustments;
 - (B) Salary increases for outstanding performance based upon documented employee productivity and exceptional performance in assigned duties; and
 - (C) Plans to compensate employees for suggestions which result in improved management in technical or administrative procedures and result in documented cost savings for the state. In certifying promotions, the director shall ensure that an employee's anniversary date remains the same regardless of the date of his promotion;
- (d) To submit to the board any proposed legislation as may be necessary to bring existing statutes relating to the administration of public employees into uniformity;
- (e) To administer the rules and regulations and all other operational aspects of the State Personnel System and to assure compliance therewith in all the departments, agencies and institutions covered by the State Personnel System;
- (f) To appoint and prescribe the duties of the State Personnel System staff, all positions of which shall be included in the state service;
- (g) To prepare an annual budget for the board covering all the costs of operating the State Personnel System, including the State Personnel Board, and the costs of administering such federal laws relating to personnel administration as the board may direct, including the Intergovernmental Personnel Act of 1970;
- (h) To assist state agencies, departments and institutions in complying with all applicable state and federal statutes and regulations

concerning discrimination in employment, personnel administration and related matters;

- (i) To recommend procedures for the establishment and abolishment of—employment positions within those departments, agencies and institutions not excluded from this chapter;
- (j) To cooperate with appointing authorities in the administration of this chapter in order to promote public service and establish conditions of service which will attract and retain employees of character and capacity and to increase efficiency and economy in governmental departments by the improvement of methods of personnel administration with full recognition of the requirements and needs of management.

SOURCES: Laws, 1980, ch. 303, § 7; 1981, ch. 504, § 8; 1989, ch. 533, § 1, eff from and after July 1, 1989.

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-121. State service; status of permanent or certified employees under prior systems.

The state service, as defined by section 25-9-107, shall consist of all positions now existing in the state departments, agencies and institutions or hereafter established, except those included in the nonstate service by this chapter. Such positions shall be covered by the state personnel system. Any officer or employee who has acquired a valid permanent status under the Mississippi Coordinated Merit System Council existing on the effective date of this chapter shall continue in such status and shall not be required to take further or new examinations in order to retain such status. Any officer or employee who has been certified by the Mississippi Classification Commission and appointed by a state agency head as of February 1, 1981, shall continue in such status and shall not be required to take further or new examinations in order to retain such status.

SOURCES: Laws, 1980, ch. 303, § 8(1), eff from and after February 1, 1981.

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-123. Nonstate service; exclusion of positions covered by prior systems.

The nonstate service, as defined by section 25-9-107, shall consist of all positions in the departments, agencies and institutions of state government not included in the state service under this chapter and shall not be subject to the rules and regulations of the state personnel system. No position existing on February 1, 1981, which is covered by the Mississippi Coordi-

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nated Merit System Council shall be excluded from the state service, unless such position is specifically excluded by this chapter.

SOURCES: Laws, 1980, ch. 303, § 8(2), eff from and after February 1, 1981.

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-125. Temporary assignment of state service employees to nonstate service.

A state service employee, with the consent of the head of the department, agency or institution and the concurrence of the state personnel director, may be placed on a leave of absence for purposes of accepting an assignment in the nonstate service for a period not to exceed one (1) year, subject to rules adopted by the board.

SOURCES: Laws, 1980, ch. 303, § 8(3), eff from and after February 1, 1981.

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-126. Furlough of federally funded employees.

In the event that federal funds for the funding of programs of any state agency shall be restricted or limited, the administrative board of such agency or agency administrative head shall have the authority to furlough rather than dismiss employees in accordance with rules and regulations established by the State Personnel Board.

SOURCES: Laws, 1991, ch. 600, § 1, eff from and after July 1, 1991.

§ 25-9-127. Prerequisites to dismissal or action adversely affecting compensation or employment status; exceptions.

No employee of any department, agency or institution who is included under this chapter or hereafter included under its authority, and who is subject to the rules and regulations prescribed by the state personnel system may be dismissed or otherwise adversely affected as to compensation or employment status except for inefficiency or other good cause, and after written notice and hearing within the department, agency or institution as shall be specified in the rules and regulations of the state personnel board complying with due process of law; and any employee who has by written notice of dismissal or action adversely affecting his compensation or employment status shall, on hearing and on any appeal of any decision made in such action, be required to furnish evidence that the reasons stated in the notice of dismissal or action adversely affecting his compensation or employment status are not true or are not sufficient grounds for the action taken; provided, however, that this provision shall not apply (a) to persons separated from any department, agency or institution due to curtailment of

funds or reduction in staff when such separation is in accordance with rules and regulations of the state personnel system; (b) during the probationary period of state service of twelve (12) months; and (c) to an executive officer of any state agency who serves at the will and pleasure of the governor, board, commission or other appointing authority.

SOURCES: Laws, 1980, ch. 303, § 9(1), eff from and after February 1, 1981.

Cross references—

Duty and function of state personnel board to appoint an employee appeals board to deal with certain personnel matters, see §§ 25-9-115, 25-9-129.

Intent of sections 25-9-127 to 25-9-131 to supercede and replace any existing statutory procedure conflicting in whole or in part which provides for the discharge of state employees in any state agency, see § 25-9-131.

Judicial review of final decisions of employee appeals board, see § 25-9-132.

Action by public employee to recover civil fines and other penalties from agency for taking action against employee for disclosing information to investigative agency or body, see § 35-9-177.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Applicability of this section to dismissal of members of the highway safety patrol, see § 45-3-17.

Research and Practice References—

15A Am Jur 2d, Civil Service §§ 52 et seq.

67 CJS, Officers §§ 49-62, 64, 65.

4 Am Jur Legal Forms 2d, Civil Service § 57:12, (form of notice of intention to dismiss civil service employee).

Annotations—

Determination as to good faith in abolition of public officer or employment subject to civil service or merit system. 87 ALR3d 1165.

Rights of state and municipal public employees in grievance proceedings. 46 ALR4th 912.

Public employee's right of free speech under Federal Constitution's First Amendment—Supreme Court cases. 97 L Ed 2d 903.

JUDICIAL DECISIONS

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursuant to

§ 25-9-127(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-115, 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. *Gill v Mississippi Dept. of Wildlife Conservation* (1990, Miss) 574 So 2d 586.

§ 25-9-129. Employee appeals board; membership; terms of office; compensation.

The State Personnel Board shall appoint an employee appeals board, which shall consist of three (3) hearing officers, for the purpose of holding

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hearings, compiling evidence and rendering decisions on appeals of state agency action adversely affecting the employment status or compensation of any employee in the state service. Hearings before the employee appeals board may be conducted by an individual hearing officer or by the board en banc, as provided in state personnel board rules. The original appointments shall be effective February 1, 1981, as follows:

- (a) One (1) hearing officer from the first supreme court district, for a term of two (2) years to expire February 1, 1983;
- (b) One (1) hearing officer from the second supreme court district, for a term of three (3) years to expire February 1, 1984; and
- (c) One (1) hearing officer from the third supreme court district for a term of four (4) years to expire February 1, 1985.

Upon expiration of the foregoing terms, members shall be appointed by the board for terms to expire February 1 each four (4) years thereafter, and may be reappointed. The members of the employee appeals board shall be paid an appropriate fee, to be established by the attorney general, and they shall be reimbursed for any actual and necessary expenses incurred while hearing an appeal as authorized by general law.

SOURCES: Laws, 1980, ch. 303, § 9(2); 1982, ch. 390, § 3, eff from and after July 1, 1982.

Cross references—

Similar provision directing the state personnel board to appoint an employee appeals board to deal with certain personnel matters, see § 25-9-115.

Intent of sections 25-9-127 to 25-9-131 to supercede and replace any existing statutory procedure conflicting in whole or in part which provides for the discharge of state employees in any state agency, see § 25-9-131.

Costs for recording hearings before employee appeals board and contracting with court reporters, see § 25-9-132.

Manner of judicial review of employee appeals board decisions, see § 25-9-132.

Action by public employee to recover civil fines and other penalties from agency for taking action against employee for disclosing information to investigative agency or body, see § 35-9-177.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

JUDICIAL DECISIONS

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursuant to § 25-9-127(b), he or she may not be "adversely

affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-115, 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. *Gill v Mississippi Dept. of Wildlife Conservation* (1990, Miss.) 574 So 2d 586.

The statutory civil service appeals process was adequate to enable a discharged em-

employee to assert claims that he was denied state and federal constitutional rights. The employee could have presented before the Employee Appeals Board (EAB) every ground for relief that he asserted, including his federal claims under 42 USC § 1983. The more relaxed administrative appellate process before the EAB is quite conducive to a full airing of an employee's constitutional claim. On judicial review, the circuit court is specifically charged, pursuant to § 25-9-132, to consider whether the EAB's action abridged

"some . . . constitutional right of the employee." On final review, the employee's administrative remedies thus exhausted, he or she may pursue before the circuit court all avenues of relief that § 1983 makes available. If an aggrieved state employee were allowed to bring a § 1983 claim in chancery court after exhausting the administrative remedies and judicial review thereof, there would be a duplication of process. *Hood v Mississippi Dept. of Wildlife Conservation* (1990, Miss) 571 So 2d 263.

§ 25-9-131. Proceedings before employee appeals board; judicial review.

(1) Any employee in the state service may appeal his dismissal or other action adversely affecting his employment status to the employee appeals board created herein. The proceedings before the employee appeals board shall be de novo, and the employee shall be afforded all applicable safeguards of procedural due process. The employee appeals board shall have the authority to administer oaths and affirmations and to issue subpoenas to compel the attendance of witnesses and the production of books, papers, records or other documentary evidence upon a showing of relevancy or materiality of the witnesses or documents to an appeal pending before the board. Subpoenas so issued shall be delivered to the sheriff of the county where they are to be executed, and the sheriff shall cause them to be served. In case of the failure of any person to comply with any subpoena issued by the board, the board or its authorized representative may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to obey the order of the court may be punished by the court as a contempt thereof. The employee appeals board may modify the action of the department, agency or institution but may not increase the severity of such action on the employee. Such appointing authority shall promptly comply with the order issued as a result of the appeal to the employee appeals board.

(2) Any employee aggrieved by a final decision of the employee appeals board shall be entitled to judicial review thereof in the manner provided by law.

(3) It is the intent of sections 25-9-127 to 25-9-131 to supercede and replace any existing statutory procedure conflicting in whole or in part which provides for the discharge of state employees in any state agency.

SOURCES: Laws, 1980, ch. 303, § 9(3)-(5); 1983, ch. 349, eff from and after July 1, 1983.

Cross references—

Duty and function of state personnel board to appoint an employee appeals board to deal with certain personnel matters, see §§ 25-9-115, 25-9-129.

Judicial review of employee appeals board decisions, see § 25-9-132.

Action by public employee to recover civil fines and other penalties from agency for taking action against employee for disclosing information to investigative agency or body, see § 35-9-177.

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

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Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Research and Practice References—

15A Am Jur 2d, Civil Service §§ 71, 79 et seq.

5A Am Jur Pl & Pr Forms (Rev), Civil Service, Forms 21 et seq. (unlawful dismissal of public employees from positions).

20A Am Jur Pl & Pr Forms (Rev), Public Officers and Employees, Forms 91 et seq. (remedies of discharged employees).

4 Am Jur Legal Forms 2d, Civil Service § 57:13, (claim for damages for wrongful discharge of civil service employee).

Annotations—

Power of civil service body on own motion and without notice or hearing to reconsider, modify, vacate, or set aside order relating to dismissal of employee. 16 ALR2d 1126.

Rights of state and municipal public employees in grievance proceedings. 46 ALR4th 912.

Award of "front pay" under § 7 of Age Discrimination in Employment Act of 1967 (29 USCS § 626). 74 ALR Fed 745.

JUDICIAL DECISIONS

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursuant to § 25-9-127(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-115, 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. *Gill v Mississippi Dept. of Wildlife Conservation* (1990, Miss) 574 So 2d 586.

The statutory civil service appeals process was adequate to enable a discharged employee to assert claims that he was denied state and federal constitutional rights. The employee could have presented before the Employee Appeals Board (EAB) every ground for relief that he asserted, including his fed-

eral claims under 42 USC § 1983. The more relaxed administrative appellate process before the EAB is quite conducive to a full airing of an employee's constitutional claim. On judicial review, the circuit court is specifically charged, pursuant to § 25-9-132, to consider whether the EAB's action abridged "some . . . constitutional right of the employee." On final review, the employee's administrative remedies thus exhausted, he or she may pursue before the circuit court all avenues of relief that § 1983 makes available. If an aggrieved state employee were allowed to bring a § 1983 claim in chancery court after exhausting the administrative remedies and judicial review thereof, there would be a duplication of process. *Hood v Mississippi Dept. of Wildlife Conservation* (1990, Miss) 571 So 2d 263.

Pursuant to the directive in § 25-9-131(3) that the appeals procedure there provided "replace any existing statutory procedure," the appeals procedure set forth therein is the employee's exclusive remedy. *Hood v Mississippi Dept. of Wildlife Conservation* (1990, Miss) 571 So 2d 263.

Circuit court was without jurisdiction to order the reinstatement of a park manager who had filed no appeal bond with his petition to the circuit court for appeal and for writ of certiorari. *Grand Gulf Military Monument Com. v Cox* (1986, Miss) 492 So 2d 287.

§ 25-9-132. Judicial review of employee appeals board decisions.

Any employee aggrieved by a final decision of the employee appeals board shall be entitled to judicial review thereof in the manner provided in this section.

- (1) An appeal may be taken by such employee to the circuit court of the principal county of the employee's employment or the Circuit Court of the First Judicial District of Hinds County, by filing a petition with the clerk of such court and executing and filing bond payable to the state of Mississippi with sufficient sureties to be approved by the clerk of the court, in the penalty of five hundred dollars (\$500.00), conditioned upon the payment of all costs of appeal, including the cost of preparing the transcript of the hearing before the employee appeals board. The petition and bond shall be filed within thirty (30) days of the receipt of the final decision of the employee appeals board. Upon approval of the bond, the clerk of the court shall notify the employee appeals board, which shall prepare its record in the matter and transmit it to the circuit court.
- (2) The scope of review of the circuit court in such cases shall be limited to a review of the record made before the employee appeals board or hearing officer to determine if the action of the employee appeals board is unlawful for the reason that it was:
 - (a) Not supported by any substantial evidence;
 - (b) Arbitrary or capricious; or
 - (c) In violation of some statutory or constitutional right of the employee.
- (3) No relief shall be granted based upon the court's finding of harmless error by the board in complying with the procedural requirements of sections 25-9-127 through 25-9-129; provided, however, in the event that there is a finding of prejudicial error in the proceedings, the cause may be remanded for a rehearing consistent with the findings of the court.
- (4) Any party aggrieved by action of the circuit court may appeal to the supreme court in the manner provided by law.
- (5) In each controversy in which the employee appeals board assumes jurisdiction, the state personnel board shall assess the respondent state agency a reasonable fee to defray the cost of recording the hearing. The state personnel board is hereby authorized to contract with certified court reporters to record hearings before the employee appeals board.

SOURCES: Laws, 1984, ch. 468, eff from and after passage (approved May 10, 1984).

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Annotations—

Rights of state and municipal public employees in grievance proceedings. 46 ALR4th 912.

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JUDICIAL DECISIONS

Although the circuit court did not have the authority, under § 25-9-132, to hear the Department of Wildlife Conservation's (DWC) appeal of a final decision of the Employee Appeals Board (EAB), limited judicial review via writ of certiorari was available to the DWC under § 11-51-93, since the EAB is a "tribunal inferior" within the meaning of § 11-51-95. *Gill v Mississippi Dept. of Wildlife Conservation* (1990, Miss) 574 So 2d 586.

The statutory civil service appeals process was adequate to enable a discharged employee to assert claims that he was denied state and federal constitutional rights. The employee could have presented before the Employee Appeals Board (EAB) every ground for relief that he asserted, including his federal claims under 42 USC § 1983. The more relaxed administrative appellate process before the EAB is quite conducive to a full airing of an employee's constitutional claim. On judicial review, the circuit court is

specifically charged, pursuant to § 25-9-132, to consider whether the EAB's action abridged "some . . . constitutional right of the employee." On final review, the employee's administrative remedies thus exhausted, he or she may pursue before the circuit court all avenues of relief that § 1983 makes available. If an aggrieved state employee were allowed to bring a § 1983 claim in chancery court after exhausting the administrative remedies and judicial review thereof, there would be a duplication of process. *Hood v Mississippi Dept. of Wildlife Conservation* (1990, Miss) 571 So 2d 263.

State employee, by not appealing to Circuit Court decision of hearing officer's dismissal of employee's case for lack of jurisdiction, specifically agreed with hearing officer that his was non-grievable matter. *Mississippi Forestry Com. v Piazza* (1987, Miss) 513 So 2d 1242, 3 BNA IER Cas 236.

§ 25-9-133. Recommendations and position audits by board.

(1) The board shall recommend policies and procedures for the efficient and economical use of employment positions. The board shall report to the State Fiscal Management Board and the Legislative Budget Office recommendations for the number of employment positions and costs within each department, agency or institution. Such recommendation shall include the job title and salary of each position. The board shall conduct periodic position audits within each department, agency or institution to ensure the effective and efficient use of all personnel resources and to determine compliance with organization and staffing plans by agencies as presented by Section 25-9-115(n).

(2) No person shall be employed by any agency for any period for any purpose except in an employment position authorized by legislative appropriation or by the body authorized by law to escalate budgets and approve employment positions under the guidelines established by the Legislature. Each employment position so authorized shall be classified and assigned a pay range on the basis of actual job content, according to the State Classification Plan.

SOURCES: Laws, 1980, ch. 303, § 10(1); 1981, ch. 504, § 12; 1984, ch. 488, § 173; 1985, ch. 404, § 2, eff from and after July 1, 1985.

Editor's Note—

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration."

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-134. Establishment of program to encourage and recognize excellence in government.

(1) The Legislature finds (a) that effective state and local governmental institutions are essential in the maintenance and development of public administration in an increasingly complex and interdependent society; (b) that since numerous governmental activities administered by district and local governments are related to a statewide purpose and are financed in part by state funds, a state interest exists in a high caliber of public service in state, district and local governments; and (c) that the quality of public service at all levels of government can be improved by the development of innovative systems of public administration.

(2) The State Personnel Board is hereby authorized and directed to establish a program to encourage and recognize excellence, innovation and diversity on the part of state, district and local governmental entities in the design, execution and management of their own administrative procedures. The State Personnel Board shall establish by rule and regulation procedures for evaluating said examples of improvement in public administration, and shall provide for an annual awards program to recognize excellence in government. The board may establish categories of governmental service in order to recognize these achievements.

(3) Nominations for awards under the program of excellence in government prescribed herein shall be made to the State Personnel Director by the governing authority or board of the governmental entity employing the particular individual or group of individuals to be recognized. Such nominations shall be made at such time or times and shall contain such information as the State Personnel Board may prescribe. All nominations shall be submitted by the State Personnel Director to the Governor for review, comments and recommendation at least sixty (60) days prior to final evaluation by the State Personnel Board. An explanation in writing shall be sent to the Governor in the event the State Personnel Board does not concur with recommendations of the Governor in approving or disapproving said nominations.

(4) Nominations for awards under the program of excellence in government shall set forth clear and practicable actions for the improvement of particular aspects of technical or administrative procedure, such as:

- (a) Establishment of personnel systems of general or special functional coverage to meet the needs of urban, suburban or rural governmental jurisdictions that may not be able to provide career inducements to well qualified professional, administrative and technical personnel;
- (b) Strengthening one or more major areas of public administration, such as personnel recruitment, personnel training, personnel development and payroll administration; or
- (c) Increasing intergovernmental cooperation with respect to such mat-

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ters as personnel interchange, personnel recruiting, manpower utilization and interchange and fringe benefits.

(5) As part of the program of excellence in government, the State Personnel Board shall authorize and establish guidelines for state agencies to accept and present cash awards and bonuses as part of any federally funded employee awards incentive. The guidelines shall authorize state employees to compete for federal incentives and authorize state agencies to accept federal funds earmarked for incentives. All federal awards and bonuses received by state agencies shall not be designated as part of the agency's yearly budget for the purpose of receiving state appropriations.

(6) The State Personnel Board may evaluate a nominee under the program of excellence in government and recommend a monetary award for those suggestions which improve management of technical or administrative procedures resulting in bona fide cost reduction for the state or local governmental entity. Upon approval of such an award by the board, the State Personnel Board may notify the State Auditor or the local governmental authority, as the case may be, who shall pay the award to the employee upon receipt of the proper requisition.

SOURCES: Laws, 1985, ch. 404, § 1; 1987, ch. 389, eff from and after July 1, 1987.

Editor's Note—

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-135. State personnel director to review payrolls and collect statistical information; retention of payroll warrants for agency violations.

(1) The state personnel director shall review the payroll of each department, agency and institution for conformity with state personnel system rules and regulations and determine whether the payroll conforms to the said rules and regulations and is in compliance with legislatively authorized employment positions. The board shall implement a central personnel record system which shall be used as a basis for payment of salaries of state employees.

(2) In order to furnish the governor, the state legislature and the general

public with statistical information which can be used in planning departmental programs and budgeting, each department, agency and institution whose employees are in the state and nonstate service shall submit such payroll and other essential personnel and organizational data as may be prescribed and approved by the board to the state personnel director, who shall compile and consolidate reports pertaining to the number of personnel, salaries, length of service, type of work, distribution of employees by departments, agencies and institutions, and other personnel information as may be deemed necessary by the board.

(3) If the personnel director shall determine that any agency as defined by this chapter shall have violated any provision of this chapter, he shall prepare a written report of findings to be certified by the state personnel board and furnish the report to the state auditor of public accounts. The state auditor of public accounts shall withhold issuance of any payroll warrant determined in violation of this chapter as certified by the board and shall take such action as required by law to initiate an immediate audit of any agency found in violation for the purpose of civil recovery of funds misspent.

SOURCES: Laws, 1980, ch. 303, § 10(2), (3); 1981, ch. 504, § 13, eff from and after July 1, 1981.

Editor's Note—

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-137. Reorganization and consolidation of prior systems.

The Mississippi Classification Commission shall be responsible for a plan to orderly reorganize and consolidate the existing classification commission staff and the Mississippi Coordinated Merit System Council staff. The reorganization and consolidation plan shall be completed by February 1, 1981. The state capitol commission shall provide such office space as required to accommodate the reorganization and consolidation.

SOURCES: Laws, 1980, ch. 303, § 11, eff from and after passage (approved February 8, 1980).

Editor's Note—

Section 29-6-1, as added by Laws, 1984, chapter 488, § 7, provided, at subsection (2) therein, that the words "capitol commission" appearing in the laws of the state shall be construed to

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mean the bureau of capitol facilities of the office of general services. Thereafter, Laws, 1989, chapter 544, § 24, amended section 7-1-451 to provide that the term "Office of General Services" appearing in any law of the state shall mean the Department of Finance and Administration.

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-139. Status of employees, equipment and supplies of prior systems; transfer of funds appropriated to prior systems.

(1) Employees of the Mississippi Classification Commission and the Mississippi Coordinated Merit System Council holding positions on February 1, 1981, shall be employees of the state personnel board on February 1, 1981; and all offices, equipment, supplies, services, programs and other activities of the Mississippi Classification Commission and the Mississippi Coordinated Merit System Council are hereby made offices, equipment, supplies, services, programs and other activities of the state personnel board.

(2) The state personnel board may, with the approval of the commission of budget and accounting require the transfer of funds appropriated for the use of the Mississippi Classification Commission and the Mississippi Coordinated Merit System Council. Said funds shall be transferred by the state auditor to a separate account in the state treasury. The auditor shall issue his warrants upon requisitions signed by the proper person or officer designated by the board.

SOURCES: Laws, 1980, ch. 303, § 12, off from and after February 1, 1981.

Editor's Note—

Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor," and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-141. Funding for state personnel board; proration of costs.

The state personnel board may, in the discretion of the legislature, operate from special funds provided from department, agency and institution assessments. In the event the legislature adopts the assessment procedure, the cost of said operations shall be prorated among all departments, agencies and institutions, based upon the number of employment positions

authorized and/or serviced by the board, and the departments, agencies and institutions shall pay their share of the cost upon receipt of billing from the board.

SOURCES: Laws, 1980, ch. 303, § 13, *eff* from and after passage (approved February 8, 1980).

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-143. Status of employees in merit positions and exempt positions.

Unless otherwise provided in this chapter, each personnel system officer or employee in a merit position affected by this chapter shall be entitled to all rights which he possessed under the Mississippi Classification Law and under the Mississippi Coordinated Merit System Council in a merit position before the effective date of this chapter. All previously exempt employment positions created by separate laws are hereby included in the provisions of this chapter, except as excluded in section 25-9-107.

SOURCES: Laws, 1980, ch. 303, § 14, *eff* from and after February 1, 1981.

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

§ 25-9-145. Official coercion prohibited; penalties.

(1) No elected state official, elected state district official, appointed state official or member of the judiciary shall use his official authority or influence to coerce, by threat of discharge from employment or otherwise, the political action of a person or body.

(2) Any official who violates this section shall be subject to removal from his position by proceedings initiated in the circuit court by the office of the attorney general, on his own motion or on relation of another; and any official so found in violation of subsection (1) of this section shall be guilty of a misdemeanor in office and imprisoned for a term not less than one (1) year or more than five (5) years or fined not more than five thousand dollars (\$5,000.00), or both. Funds appropriated for the position from which any official is removed under the provisions of this chapter shall not thereafter be used to pay the salary of such individual.

SOURCES: Laws, 1980, ch. 303, § 15, *eff* from and after passage (approved February 8, 1980).

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

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JUDICIAL DECISIONS

A probationary employee of the Department of Wildlife Conservation (DWC) had the right to fair treatment without regard to creed, political opinion or affiliation, and to be secure in his employment from partisan or political interference; he enjoyed a procedural right to appeal to the Employee Appeals Board (EAB) a DWC action terminating his employment, insofar as that action may have been based upon political opinions, affiliations or interference. Although a probationary employee enjoys no protection via the "inefficiency or other good cause" standard pursu-

ant to § 25-9-127(b), he or she may not be "adversely affected" for other unlawful reasons. Although §§ 25-9-103 and 25-9-145(1), standing alone, confer upon state employees no express right to be secure in their employment from political interference, the legal existence of the legislative language in those statutes makes no sense absent such rights. Under §§ 25-9-115, 25-9-129 and 25-9-131, the employee had the right to appeal the DWC's decision to the EAB. *Gill v Mississippi Dept. of Wildlife Conservation* (1990, Miss) 574 So 2d 586.

§ 25-9-147. Variable compensation plan; annual review and report; designation of plan as "Colonel Guy Groff State Variable Compensation Plan".

The State Personnel Board shall review on an annual basis the variable compensation plan adopted by the Legislature at the regular session of 1981 and subsequently implemented by the State Personnel Board. Each state department or agency subject to the variable compensation plan shall prepare an annual written report under the direction of the head of that department or agency outlining the impact which the plan has had on that department or agency during the preceding fiscal year. Such department or agency report shall be submitted to the State Personnel Board and shall become a part of the board's annual review of the variable compensation plan. After conducting its annual review of the plan and studying the report of each department or agency, the State Personnel Board shall prepare a written legislative report, to be submitted to the members of the Mississippi Legislature prior to January 1 of each year. This written report shall accurately reflect the effect of the variable compensation plan on the various departments or agencies subject to the plan. From and after July 1, 1985, the plan shall be named the "Colonel Guy Groff State Variable Compensation Plan".

SOURCES: Laws, 1982, ch. 311; 1985, ch. 362, eff from and after July 1, 1985.

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163

§ 25-9-149. Discriminatory practices prohibited.

It is the intent of the legislature that no person seeking employment in state service, as defined in section 25-9-107, Mississippi Code of 1972, or employed in state service, as defined in section 25-9-107, Mississippi Code of 1972, shall be discriminated against on the basis of race, color, religion, sex, national origin, age or handicap.

SOURCES: Laws, 1984, ch. 486, § 333, eff from and after July 1, 1984.

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

Research and Practice References—

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Forms 81 et seq. (employment; job discrimination generally).

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Forms 101 et seq. (employment; racial discrimination).

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Forms 111 et seq. (employment; sexual discrimination).

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Forms 131 et seq. (employment; age discrimination).

5A Am Jur Pl & Pr Forms (Rev), Civil Rights, Forms 141, 151 et seq. (employment; religion and religious beliefs, physical handicap).

29 Am Jur Trials 1, Age Discrimination in Employment Act under ADEA.

15 Am Jur Proof of Facts 2d 481, Age as Bona Fide Occupational Qualification under ADEA.

33 Am Jur Proof of Facts 2d 71, Employer's Discriminatory Appearance Code.

36 Am Jur Proof of Facts 2d 249, Discrimination Against the Obese.

Annotations—

What constitutes employment discrimination on basis of "marital status" for purposes of state civil rights laws. 44 ALR4th 1044.

Accommodation requirement under state legislation forbidding job discrimination on account of handicap. 76 ALR4th 310.

Handicap as job disqualification under state legislation forbidding job discrimination on account of handicap. 78 ALR4th 265.

Damages and other relief under state legislation forbidding job discrimination on account of handicap. 78 ALR4th 435.

Discrimination "because of handicap" or "on the basis of handicap" under state statutes prohibiting job discrimination on account of handicap. 81 ALR4th 144.

What constitutes handicap under state legislation forbidding job discrimination on account of handicap. 82 ALR4th 26.

Who is "employee" within meaning of Age Discrimination in Employment Act (29 USCS §§ 621-634). 69 ALR Fed 700.

Reinstatement as remedy for discriminatory discharge or demotion under Age Discrimination in Employment Act (29 USCS §§ 621 et seq.). 78 ALR Fed 575.

Actions under Age Discrimination in Employment Act (29 USCS §§ 621-634) challenging hiring or retirement practices in law enforcement employment. 79 ALR Fed 373.

Job discrimination against unwed mothers or unwed pregnant women as proscribed under Pregnancy Discrimination Act (42 USCS § 2000e(k)). 91 ALR Fed 178.

Pension plan designed to induce early retirement of employees of certain age as violation of Age Discrimination in Employment Act (29 USCS §§ 621 et seq.) or ERISA (29 USCS §§ 1001 et seq.). 91 ALR Fed 296.

Circumstances which warrant finding of constructive discharge in cases under Age Discrimination in Employment Act (29 USCS §§ 621 et seq.). 93 ALR Fed 10.

§ 25-9-151. Longevity service award program.

(1) There is hereby established a longevity service award program for full-time employees of the State of Mississippi.

(2) The State Personnel Board shall coordinate the design, purchase, distribution and presentation of service awards based on years of service with the State of Mississippi for full-time employees in all state agencies, boards and commissions.

(3) The longevity service awards shall be made upon attainment of ten (10), twenty (20) and thirty (30) years of full-time service in state government, and shall be the same for all personnel regardless of position or title.

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(4) The State Personnel Board shall promulgate such reasonable rules and regulations as deemed necessary in carrying out the provisions of this longevity service awards program.

(5) Nothing in this section shall be construed as authorizing the giving of gifts or monetary bonuses to employees.

SOURCES: Laws, 1990, ch. 339, § 1, *eff from and after passage* (approved March 12, 1990).

Cross references—

Application of rules and regulations of board to compensation of employees of Department of Rehabilitation Services, see § 37-33-159.

Application of rules and regulations of board to appointment of employees of Office of Disability Determination Services, see § 37-33-163.

PROTECTION OF PUBLIC EMPLOYEE FROM REPRISAL FOR GIVING INFORMATION TO INVESTIGATIVE BODY OR AGENCY

Sec.

25-9-171. Definitions.

25-9-173. Prohibition against dismissing or adversely affecting compensation or employment status of public employee for providing information to investigative body.

25-9-175. Liability of agency for violating provisions.

25-9-177. Actions to recover civil fines and other penalties.

§ 25-9-171. Definitions.

For purposes of Sections 25-9-171 through 25-9-177, the following terms shall have the meanings ascribed to them herein:

(a) "Investigative body" shall mean any committee of the Legislature, any legislative committee staff, the Attorney General, the Mississippi Ethics Commission, the Department of Audit, the Department of Public Safety, any district attorney and any grand jury.

(b) "Public employee" shall mean any state or nonstate service employee as defined by Section 25-9-107, Mississippi Code of 1972.

(c) "Agency" shall mean any board, commission, authority, institution or agency employing state and nonstate service employees as defined by Section 25-9-107, Mississippi Code of 1972.

SOURCES: Laws, 1991, ch. 454, § 1, *eff from and after July 1, 1991*.

§ 25-9-173. Prohibition against dismissing or adversely affecting compensation or employment status of public employee for providing information to investigative body.

No agency shall dismiss or otherwise adversely affect the compensation or employment status of any public employee because the public employee testified or provided information to an investigative body whether or not the testimony or information is provided under oath.

SOURCES: Laws, 1991, ch. 454, § 2, *eff from and after July 1, 1991*.

Cross references—

Penalties for violation of this section, see § 25-9-175.

§ 25-9-175. Liability of agency for violating provisions.

Any agency which violates the provisions of Section 25-9-173 shall be

liable to the public employee for back pay and reinstatement. Additionally, each member of any agency's governing board or authority may be found individually liable for a civil fine of up to Ten Thousand Dollars (\$10,000.00) for each violation of Section 25-9-173. In any instance where the agency in violation of Section 25-9-173 has no governing board or authority, the agency's executive director may be found individually liable for a civil fine not to exceed Ten Thousand Dollars (\$10,000.00).

SOURCES: Laws, 1991, ch. 454, § 3, eff from and after July 1, 1991.

Cross references—

Actions to recover civil fines or other remedies provided for in this section, see § 25-9-177.

§ 25-9-177. Actions to recover civil fines and other penalties.

Actions to recover civil fines and other remedies provided for under Section 25-9-175 may be instituted in the Circuit Court for the First Judicial District of Hinds County or in the circuit court of the public employees' residence. In such actions, the public employee shall prove by a preponderance of the evidence that his dismissal or any adverse action taken against him was the direct result of providing information or testimony to an investigative body. Remedies provided for herein shall be supplemental to any other remedies, judicial or administrative, provided for under law. No state-service employee shall be required to exhaust any administrative remedies provided for under Sections 25-9-127 through 25-9-131, Mississippi Code of 1972, prior to instituting an action authorized under this section.

SOURCES: Laws, 1991, ch. 454, § 4, eff from and after July 1, 1991.

VETERAN'S PREFERENCE

Sec.

25-9-301. Definitions.

25-9-303. Preference for veterans in appointment, promotion and layoffs.

25-9-305. Rules and regulations.

§ 25-9-301. Definitions.

The following terms shall have the meaning ascribed herein unless the context shall require otherwise:

(a) "Veteran" means a person who served in the active Armed Forces of the United States for a period of ninety (90) days during a period of war or armed conflict and was granted an honorable discharge therefrom; or was discharged therefrom for a service-connected injury in less than ninety (90) days.

(b) "Disabled veteran" means a veteran who the Veterans Administration has certified to have a service-connected disability within the last ninety (90) days.

SOURCES: Laws, 1980, ch. 346, § 1; 1991, ch. 476, § 1, eff from and after July 1, 1991.

Research and Practice References—

77 Am Jur 2d, Veterans and Veterans' Laws §§ 122-126.

82 CJS, Statutes § 113.

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§ 25-9-303. Preference for veterans in appointment, promotion and layoffs.

(1) The state personnel board shall grant each veteran who is fully qualified preference over other applicants for an initial or promotional appointment. Disabled veterans shall be given additional preference.

(2) In establishing a layoff formula or procedure, the state personnel board shall grant preference to veterans and additional preference to disabled veterans.

SOURCES: Laws, 1980, ch. 346, § 2, eff from and after February 1, 1981.

Cross references—

Reemployment preference for veterans returning to municipal civil service, see § 21-31-17.

State personnel board, generally, see §§ 25-9-101 et seq.

State veterans' affairs board, see §§ 35-1-1 et seq.

Miscellaneous provisions regarding war veterans, see §§ 35-3-1 et seq.

Veteran's preference for members of highway patrol, see § 45-3-15.

Research and Practice References—

77 Am Jur 2d, Veterans and Veterans' Laws §§ 122-126.

82 CJS, Statutes § 113.

24 Am Jur Pl & Pr Forms, Veterans, Forms 11, 12.

Annotations—

Rights of non-civil service public employees, with respect to discharge or dismissal, under state veterans' tenure statutes. 58 ALR2d 960.

What is "cause" justifying discharge from employment of returning serviceman re-employed under § 9 of the Military Selective Service Act of 1967 (50 USC Appendix § 459). 9 ALR Fed 225.

Applicability to fringe benefits of Vietnam Era Veterans' Readjustment Assistance Act provision establishing veterans' reemployment rights (38 USCS § 2021). 83 ALR Fed 908.

§ 25-9-305. Rules and regulations.

The state personnel board is authorized to establish a formula or formulas by rule and regulation to implement the provisions of sections 25-9-301 et seq.

SOURCES: Laws, 1980, ch. 346, § 3, eff from and after February 1, 1981.

Cross references—

State personnel board, generally, see §§ 25-9-101 et seq.

Research and Practice References—

77 Am Jur 2d, Veterans and Veterans' Laws §§ 122-126.

81A CJS, States §§ 86, 94

82 CJS, Statutes § 113

PUBLIC OFFICERS, EMPLOYEES, AND RECORDS
PERSONNEL ADMINISTRATION SYSTEM

Sec.

- 25-9-103. Principles applicable to administration of state personnel system.
- 25-9-107. Definitions.
- 25-9-115. Specific duties and functions of board.
- 25-9-119. State personnel director; selection; qualifications; duties.
- 25-9-120. Contract personnel not state service or nonstate service employees of state; creation of Personal Service Contract Review Board; powers and duties of board.
- 25-9-127. Prerequisites to dismissal or action adversely affecting compensation or employment status; exceptions.
- 25-9-148. Annual report regarding increases in compensation, other than salary increases authorized by Legislature.
- 25-9-153. Operator of state-owned vehicle must have valid state drivers license.
- 25-9-155. Nonstate service employees to be given preference for state jobs over general public.

§ 25-9-103. Principles applicable to administration of state personnel system.

The State Personnel Board herein established shall administer a state personnel system in accordance with the following principles:

- (a) To recruit, select and advance employees on the basis of their relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment;
- (b) To provide equitable and adequate compensation;
- (c) To train employees, as needed, to assure high quality performance;
- (d) To retain employees on the basis of the adequacy of their performance, to correct inadequate performance, and to separate employees whose inadequate performance cannot be corrected;
- (e) To assure fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, national origin, sex, religious creed, age or disability;
- (f) To assure that employees are free from coercion for partisan or political purposes and to prohibit employees from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office;
- (g) To provide authority for the establishment and abolishment of employment positions within the departments, agencies and institutions covered under the provisions of this chapter.

SOURCES: Laws, 1996, ch. 321, § 1, eff from and after July 1, 1996.

Amendment Note—

The 1996 amendment deleted "physical" preceding "disability" in paragraph (e).

Annotations—

Application of state law to age discrimination in employment. 51 ALR5th 1.

Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 ALR5th 163.

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Who is "employer" within meaning of Age Discrimination in Employment Act of 1967 (29 USCS § 621 et seq.). 137 ALR Fed 551.

§ 25-9-107. Definitions.

The following terms, when used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) "Board" shall mean the State Personnel Board created under the provisions of this chapter.

(b) "State service" shall mean all employees of state departments, agencies and institutions as defined herein, except those officers and employees excluded by this chapter.

(c) "Nonstate service" shall mean the following officers and employees excluded from the state service by this chapter. The following are excluded from the state service:

(i) Members of the state Legislature, their staffs and other employees of the legislative branch;

(ii) The Governor and staff members of the immediate Office of the Governor;

(iii) Justices and judges of the judicial branch or members of appeals boards on a per diem basis;

(iv) The Lieutenant Governor, staff members of the immediate Office of the Lieutenant Governor and officers and employees directly appointed by the Lieutenant Governor;

(v) Officers and officials elected by popular vote and persons appointed to fill vacancies in elective offices;

(vi) Members of boards and commissioners appointed by the Governor, Lieutenant Governor or the state Legislature;

(vii) All academic officials, members of the teaching staffs and employees of the state institutions of higher learning, the State Board for Community and Junior Colleges, and community and junior colleges;

(viii) Officers and enlisted members of the National Guard of the state;

(ix) Prisoners, inmates, student or patient help working in or about institutions;

(x) Contract personnel; provided, that any agency which employs state service employees may enter into contracts for personal and professional services only if such contracts are approved in compliance with the rules and regulations promulgated by the State Personal Service Contract Review Board under Section 25-9-120(3). Before paying any warrant for such contractual services in excess of One Hundred Thousand Dollars (\$100,000.00), the Auditor of Public Accounts, or the successor to those duties, shall determine whether the contract involved was for personal or professional services, and, if so, was approved by the State Personal Service Contract Review Board;

(xi) Part-time employees; provided, however, part-time employees shall only be hired into authorized employment positions classified by the board, shall meet minimum qualifications as set by the board, and shall be paid in accordance with the Variable Compensation Plan as certified by the board;

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(xii) Persons appointed on an emergency basis for the duration of the emergency; the effective date of the emergency appointments shall not be earlier than the date approved by the State Personnel Director, and shall be limited to thirty (30) working days. Emergency appointments may be extended to sixty (60) working days by the State Personnel Board;

(xiii) Physicians, dentists, veterinarians, nurse practitioners and attorneys, while serving in their professional capacities in authorized employment positions who are required by statute to be licensed, registered or otherwise certified as such, provided that the State Personnel Director shall verify that the statutory qualifications are met prior to issuance of a payroll warrant by the auditor;

(xiv) Personnel who are employed and paid from funds received from a federal grant program which has been approved by the Legislature or the Department of Finance and Administration whose length of employment has been determined to be time-limited in nature. This subparagraph shall apply to personnel employed under the provisions of the Comprehensive Employment and Training Act of 1973, as amended, and other special federal grant programs which are not a part of regular federally funded programs wherein appropriations and employment positions are appropriated by the Legislature. Such employees shall be paid in accordance with the Variable Compensation Plan and shall meet all qualifications required by federal statutes or by the Mississippi Classification Plan;

(xv) The administrative head who is in charge of any state department, agency, institution, board or commission, wherein the statute specifically authorizes the Governor, board, commission or other authority to appoint said administrative head; provided, however, that the salary of such administrative head shall be determined by the State Personnel Board in accordance with the Variable Compensation Plan unless otherwise fixed by statute;

(xvi) The State Personnel Board shall exclude top level positions if the incumbents determine and publicly advocate substantive program policy and report directly to the agency head, or the incumbents are required to maintain a direct confidential working relationship with a key excluded official. Provided further, a written job classification shall be approved by the board for each such position, and positions so excluded shall be paid in conformity with the Variable Compensation Plan;

(xvii) Employees whose employment is solely in connection with an agency's contract to produce, store or transport goods, and whose compensation is derived therefrom;

(xviii) Repealed;

(xix) The associate director, deputy directors and bureau directors within the Department of Agriculture and Commerce;

(xx) Personnel employed by the Mississippi Industries for the Blind; provided, that any agency may enter into contracts for the personal services of MIB employees without the prior approval of the State Personnel Board or the State Personal Service Contract Review Board; however, any agency contracting for the personal services of an MIB employee shall provide the MIB employee with not less than the entry level compensation and benefits that the agency would provide to a full-time employee of the agency who performs the same services.

(d) "Agency" means any state board, commission, committee, council, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, department, unit or the head thereof, is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof.

SOURCES: Laws, 1994, ch. 377, § 1; 1994 Ex Sess, ch. 26, § 18; 1996, ch. 343, § 1; 1997, ch. 609, § 4, eff from and after June 29, 1997; 1998, ch. 574, § 5, eff from and after July 1, 1998.

Editor's Note—

Former subparagraph (xviii) in paragraph (c) relating to State Prison Emergency Construction and Management Board personnel was repealed by its own terms from and after July 1, 1996.

Laws, 1996, ch. 343, §§ 2-4, provide:

"SECTION 2. For a period of one (1) year after the effective date of this act, the personnel actions of the Department of Agriculture and Commerce shall be exempt from State Personnel Board procedures.

"SECTION 3. All new employees shall meet criteria of the State Personnel Board as presently exists for employment.

"SECTION 4. The Department of Agriculture and Commerce shall consult with the Office of the Attorney General prior to taking personnel actions permitted by this act to review for compliance with applicable state and federal law."

Laws, 1998, ch. 574, § 2 provides as follows:

"It is the intent of the Legislature that citizens of the State of Mississippi who have physical or mental disabilities shall be afforded the opportunity to compete and participate in employment on an equal basis with persons who are not disabled, if the disabled persons are qualified and able to perform the essential functions of the employment positions that are held or sought."

Amendment Note—

The first 1994 amendment provided that licensed nurse practitioners in authorized state employment positions shall not be considered state service employees.

The second 1994 amendment in the definition "Nonstate service" added paragraph (c), subparagraph (xviii), relating to personnel employed by the State Prison Emergency Construction and Management Board.

The 1996 amendment added subparagraph (c)(xix).

The 1997 amendment substantially revised subparagraph (c)(x).

The 1998 amendment, in paragraph (c), added subparagraph (xx) relating to the Industries for the Blind.

Cross references—

Creation and duties of State Personal Service Review Board, see § 25-3-120.

Preference for nonstate service employees for state jobs, see § 25-9-153.

Attorney General's Opinions—

Mississippi Business Finance Corporation is a state agency, and one part-time employee and one full-time attorney, each of whom will be paid solely with MBFC funds, would be non state service employees. Harris, July 22, 1992, A.G.Op. #92-0624.

Miss. Code Section 25-9-107(c)(vii) provides that all academic officials, members of teaching staff and employees of state institutions of higher learning are non-state service and, therefore, are not subject to activities, rules and regulations of State Personnel Board. Cleere, Jan. 19, 1993, A.G.Op. #93-0019.

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§ 25-9-115. Specific duties and functions of board.

It shall be the specific duty and function of the State Personnel Board to:

- (a) Represent the public interest in the improvement of personnel administration in the state departments, agencies and institutions covered by the State Personnel System;
- (b) Determine appropriate goals and objectives for the State Personnel System and prescribe policies for their accomplishment, with the assistance of the Mississippi Personnel Advisory Council;
- (c) Adopt and amend policies, rules and regulations establishing and maintaining the State Personnel System. Such rules and regulations shall not be applicable to the emergency hiring of employees by the Public Employees' Retirement System pursuant to Section 25-11-15(7). The rules and regulations of the Mississippi Classification Commission and the Mississippi Coordinated Merit System Council serving federal grant-aided agencies in effect on February 1, 1981, shall remain in effect until amended, changed, modified or repealed by the board;
- (d) Ensure uniformity in all functions of personnel administration in those agencies required to comply with the provisions of this chapter. The board may delegate authority to the State Personnel Director as deemed necessary for the timely, effective and efficient implementation of the State Personnel System;
- (e) Appoint an employee appeals board, consisting of three (3) hearing officers, for the purpose of holding hearings, compiling evidence and rendering decisions on employee dismissals and other personnel matters as provided for in Sections 25-9-127 through 25-9-131. Hearing officers are not entitled to serve beyond their appointed term unless reappointed by the State Personnel Board;
- (f) Assure uniformity in the administration of state and federal laws relating to merit administration;
- (g) Establish an annual budget covering all the costs of board operations;
- (h) With the assistance of the Mississippi Personnel Advisory Council, promote public understanding of the purposes, policies and practices of the State Personnel System and advise and assist the state departments, agencies and institutions in fostering sound principles of personnel management and securing the interest of institutions of learning and of civic, professional and other organizations in the improvement of personnel standards under the State Personnel System;
- (i) Recommend policies and procedures for the establishment and abolishment of employment positions within state government and develop a system for the efficient use of personnel resources;
- (j) Cooperate with state institutions of higher learning in implementing a career management program in state agencies for graduate students in public administration in order to provide state government with a steady flow of professional public managerial talent;
- (k) Prescribe rules which shall provide that an employee in state service is not obliged, by reason of his employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so;

(l) Prescribe rules which shall provide that an employee in state service shall not use his official authority or influence to coerce the political action of a person or body;

(m) Annually report to the Governor and Legislature on the operation of the State Personnel System and the status of personnel administration in state government;

(n) Require submission and approve organization and staffing plans of departments and agencies in state and nonstate service on such forms and according to such regulations as the board may prescribe to control and limit the growth of subordinate executive and administrative units and positions and to provide for agency staff reorganization without prior board approval when authority to reorganize has been delegated to an agency as provided in paragraph (p);

(o) In coordination with appointing authorities, set the annual salaries of those appointed officials whose salaries are not otherwise set by statute who work on a full-time basis in the capacity of agency head, executive director or administrator of any state department, agency, institution, board or commission under the jurisdiction of the State Personnel Board as provided in Section 25-9-101 et seq., in conformity with the State Personnel Board's compensation plan. Salaries of incumbents required by law to serve in their professional capacity as a physician, dentist, veterinarian or attorney shall be set in accordance with Section 25-9-107(c)(xiii);

(p) Authorize the director to enter into formal agreements with department executive directors and agency directors in which employment positions within their agencies may be reallocated and organization charts amended without prior State Personnel Board approval; provided, however, that such agreements shall be revocable by the State Personnel Board and continuation shall be contingent upon the reallocations and reorganizations being conducted in accordance with rules and regulations promulgated by the State Personnel Board. In the event the State Personnel Board has delegated reallocation authority to an agency, this delegation does not remove the requirement that agencies submit personal services budget requests each fiscal year for the purpose of preparing personal services continuation budget projections. Such budget requests shall be prepared in accordance with the policies, rules and regulations promulgated by the Department of Finance and Administration, the Legislative Budget Office and the State Personnel Board. Prior to making any reallocation or reorganization effective, each appointing authority who has entered into an agreement as provided in this paragraph (p) shall certify to the State Personnel Board that the total annualized cost of any reallocation or reorganization shall be equal to or less than the cost savings generated through downward reallocation or position abolishment of vacant positions.

The personnel board shall maintain a record of every personnel transaction executed under authority delegated pursuant to this paragraph (p) and shall annually report the total cost of these transactions, by agency, to the Legislative Budget Office and the Department of Finance and Administration.

The State Personnel Board shall prescribe rules requiring the State Personnel Director to perform a compliance audit and evaluation of personnel transactions executed under authority delegated pursuant to this paragraph (p) and to publish a report of the audit listing exceptions taken by the State Personnel Director not later than the first of October each year. In the event the State Personnel Board determines that an agency has misclassified an employee or position as a result of this delegated authority, the State Personnel Board shall be authorized to correct such misclassification regardless of the state service status of the employee holding such position. Authority to correct

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such misclassifications of filled positions shall be limited to one (1) year from the date which the State Personnel Board receives written notice of the reallocation;

(q) Require that if an employment position has been determined to be in need of reallocation from one occupational class to another, the employee occupying the position shall meet the minimum qualifications for the occupational class to which the position is being reallocated in order for the position to be eligible for the reallocation. However, when a reallocation is based upon an agency reorganization due to documented funds constraints, documented change in agency function, or legislative mandate, a position may be reallocated with prior approval of the State Personnel Board;

(r) Implement a reduction-in-force policy which shall apply uniformly to all state agencies and which shall require that the appointing authority develop an equitable and systematic plan for implementation of an agency-wide reduction-in-force. If a proposed reduction-in-force is the result of a curtailment of general funds, the State Personnel Board shall review the proposed reduction-in-force plan only upon written certification of a general funds shortage from the Department of Finance and Administration. If a proposed reduction-in-force is the result of a curtailment of special funds, the State Personnel Board shall review the proposed reduction-in-force plan only upon written certification of a special funds shortage from the agency. Further, the State Personnel Board shall ensure that any reduction-in-force plan complies with all applicable policies, rules and regulations of the State Personnel Board;

(s) Implement a furlough (involuntary leave without pay) policy which shall apply uniformly to all executive and subordinate employees within an agency, regardless of job class. The State Personnel Board shall review furlough plans only upon written certification of a general funds shortage from the Department of Finance and Administration or written certification of a special funds shortage from the agency. The State Personnel Board shall ensure that any furlough plan complies with all applicable policies, rules and regulations of the State Personnel Board;

(t) Establish policies which preclude any employee under the salary setting authority of the State Personnel Board from receiving an annual salary greater than the Governor, and any employee within an agency from receiving an annual salary greater than the agency head. Employees currently receiving an annual salary exceeding the Governor or their agency head may retain their present salary but shall not receive an increase until such time as the provisions of this paragraph are met;

(u) This section shall stand repealed from and after June 30, 1999.

SOURCES: Laws, 1992, ch. 455, § 1, 1993, ch. 617, § 10; 1997, ch. 609, § 1, eff. from and after June 29, 1997, and shall stand repealed from and after June 30, 1999.

Amendment Note—

The 1997 amendment added the last sentences of paragraphs (d), (e) and (f), revised paragraphs (r) and (s), added paragraph (t), redesignated former paragraph (t) as (u) and revised the repeal date of this section from July 1, 1997 to June 30, 1999.

Cross references—

Approval of State Personnel Board required for Judicial Advisory Study Commission to hire personnel, see § 9-21-37.

Attorney General's Opinion—

Based upon Section 25-9-115, the Department of Finance and Administration is only required to verify the existence of a funds shortage based upon the facts submitted by the

agency and such independent findings as are reasonably practicable. Such verification would not require the Department of Finance and Administration to review or evaluate agency management decisions. Ranck, May 31, 1996, A.G.Op. # 96-0352.

JUDICIAL DECISIONS

1. In General

After accepting hearing officer's findings of fact, Employee Appeals Board (EAB) improperly set aside termination of Department of Corrections (DOC) employee who had received package from penitentiary post office which contained items normally sent to prisoners and then failed to report package to security or internal affairs as required by DOC policy; such employee was unfit to work for DOC in that she had demonstrated propensity to smuggle packages to criminals, given hearing officer's findings that employee knew package was not hers in that it was of type sent to inmates and that employee asked co-worker to deliver package to housing unit for in-

mates, rather than turn it in to her supervisors. *Johnson v. Mississippi Dept. of Corrections* (Miss. 1996) 682 So.2d 367.

State Personnel Board (SPB) rule providing that Employee Appeals Board (EAB) may not alter action of agency if agency acted in accordance with SPB published policies, rules and regulations does not conflict with statute providing EAB with authority to modify decision of state agency; statute does not provide any guidance as to under what circumstances EAB may modify agency's action, and SPB has statutory authority to make rules and regulations. *Johnson v. Mississippi Dept. of Corrections* (Miss. 1996) 682 So.2d 367.

§ 25-9-119. State personnel director; selection; qualifications; duties.

(1) There is hereby created the position of the State Personnel Director who shall be selected by the State Personnel Board, with the advice and consent of the Senate. The director shall have at least a master's degree in business administration, personnel management or the equivalent and shall have not less than five (5) years' experience therein. His salary shall be in accordance with the Mississippi Compensation Plan. The State Personnel Director shall serve at the will and pleasure of the State Personnel Board.

(2) The duties and responsibilities of the director shall be:

(a) To serve as executive secretary to the board, to attend meetings as directed by the board and to provide such professional, technical and other supportive assistance as may be required by the board in the performance of its duties;

(b) Consistent with board policy, to administer the operations of the State Personnel System and to otherwise act in the capacity of chief executive officer to the State Personnel Board;

(c) To submit for board approval proposed rules and regulations which shall require a uniform system of personnel administration within all agencies included in this chapter. Such rules and regulations, when approved by the board, shall be binding upon the state departments, agencies and institutions covered by this chapter and shall include provisions for the establishment and maintenance of classification and compensation plans, the conduct of examinations, employee recruiting, employee selection, the certification of eligible persons, appointments, promotions, transfers, demotions, separations, reinstatement, appeals, reports of performance, payroll certification, employee training, vacation and sick leave, compensatory leave, administrative leave, standardized record keeping forms and procedures for leave earned, accrued and used, and all other phases of personnel administration. Such rules and regulations shall not be applicable to the emergency hiring of employees by the Public Employees' Retirement System pursuant to Section 25-11-15(7). Such

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rules and regulations, or modifications thereto, as are approved by the State Personnel Board shall be filed with the Secretary of the Senate and the Clerk of the House of Representatives at least sixty (60) days prior to their effective date. The secretary and the clerk shall immediately forward copies of the rule or rules to the members of the Senate Fees, Salaries and Administration Committee, the members of the House Fees and Salaries of Public Officers Committee, the Lieutenant Governor, the Speaker of the House of Representatives and the Governor. The respective committees may submit comments to the board regarding such rules and regulations prior to their effective date;

(i) Compensation plans and modifications thereto promulgated under rules and regulations shall become effective as adopted, upon appropriation therefor by the State Legislature;

(ii) The director and the board shall provide for:

(A) Cost-of-living adjustments;

(B) Salary increases for outstanding performance based upon documented employee productivity and exceptional performance in assigned duties; and

(C) Plans to compensate employees for suggestions which result in improved management in technical or administrative procedures and result in documented cost savings for the state. In certifying promotions, the director shall ensure that an employee's anniversary date remains the same regardless of the date of his promotion;

(d) To submit to the board any proposed legislation as may be necessary to bring existing statutes relating to the administration of public employees into uniformity;

(e) To administer the rules and regulations and all other operational aspects of the State Personnel System and to assure compliance therewith in all the departments, agencies and institutions covered by the State Personnel System;

(f) To appoint and prescribe the duties of the State Personnel System staff, all positions of which shall be included in the state service;

(g) To prepare an annual budget for the board covering all the costs of operating the State Personnel System, including the State Personnel Board, and the costs of administering such federal laws relating to personnel administration as the board may direct, including the Intergovernmental Personnel Act of 1970;

(h) To assist state agencies, departments and institutions in complying with all applicable state and federal statutes and regulations concerning discrimination in employment, personnel administration and related matters;

(i) To recommend procedures for the establishment and abolishment of employment positions within those departments, agencies and institutions not excluded from this chapter;

(j) To cooperate with appointing authorities in the administration of this chapter in order to promote public service and establish conditions of service which will attract and retain employees of character and capacity and to increase efficiency and economy in governmental departments by the improvement of methods of personnel administration with full recognition of the requirements and needs of management.

SOURCES: Laws, 1993, ch. 617, § 11, eff from and after passage (approved April 19, 1993).

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Annotations—

Application of state law to age discrimination in employment. 51 ALR5th 1.

§ 25-9-120. Contract personnel not state service or nonstate service employees of state; creation of Personal Service Contract Review Board; powers and duties of board.

(1) Contract personnel, whether classified as contract workers or independent contractors shall not be deemed state service or nonstate service employees of the State of Mississippi, and shall not be eligible to participate in the Public Employees' Retirement System, or the state employee health plan, nor be allowed credit for personal and sick leave and other leave benefits as employees of the State of Mississippi, notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth herein. Contract workers, i.e., contract personnel who do not meet the criteria of independent contractors, shall be subject to the provisions of Section 25-11-127.

(2) There is hereby created the Personal Service Contract Review Board, which shall be composed of the State Personnel Director, the Executive Director of the Department of Finance and Administration, or his designee, the Commissioner of Corrections, or his designee, the Executive Director of the Mississippi Department of Wildlife and Fisheries, or his designee, and the Executive Director of the Department of Environmental Quality, or his designee. The State Personnel Director shall be chairman and shall preside over the meetings of the board. The board shall annually elect a vice-chairman, who shall serve in the absence of the chairman. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Three (3) members shall be a quorum. No action shall be valid unless approved by the chairman and two (2) other of those members present and voting, entered upon the minutes of the board and signed by the chairman. Necessary clerical and administrative support for the board shall be provided by the State Personnel Board. Minutes shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the Legislative Budget Office.

(3) The Personal Service Contract Review Board shall have the following powers and responsibilities:

(a) Promulgate rules and regulations governing the solicitation and selection of contractual services personnel including personal and professional services contracts for any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the exception of any personal service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services, any personal service contracts entered into by the Mississippi Department of Transportation, and any contract for attorney, accountant, auditor, physician, dentist, architect, engineer, veterinarian and utility rate expert services. Any such rules and regulations shall provide for maintaining continuous internal audit covering the activities of such agency affecting its revenue and expenditures as required under Section 7-7-3(6)(d), Mississippi Code of 1972.

(b) Approve all personal and professional services contracts involving the expenditures of funds in excess of One Hundred Thousand Dollars (\$100,000.00).

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(c) Develop standards with respect to contractual services personnel which require invitations for public bid, requests for proposals, record keeping and financial responsibility of contractors. The Personal Service Contract Review Board may, in its discretion, require the agency involved to advertise such contract for public bid, and may reserve the right to reject any or all bids;

(d) Prescribe certain circumstances whereby agency heads may enter into contracts for personal and professional services without receiving prior approval from the Personal Service Contract Review Board. The Personal Service Contract Review Board may establish a pre-approved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board.

(e) To provide standards for the issuance of requests for proposals, the evaluation of proposals received, consideration of costs and quality of services proposed, contract negotiations, the administrative monitoring of contract performance by the agency and successful steps in terminating a contract;

(f) To present recommendations for governmental privatization and to evaluate privatization proposals submitted by any state agency;

(g) To authorize personal and professional service contracts to be effective for more than one (1) year provided a funding condition is included in any such multiple year contract;

(h) To request the State Auditor to conduct a performance audit on any personal or professional service contract;

(i) Prepare an annual report to the Legislature concerning the issuance of personal service contracts during the previous year, collecting any necessary information from state agencies in making such report.

(4) No member of the Personal Service Contract Review Board shall use his official authority or influence to coerce, by threat of discharge from employment, or otherwise, the purchase of commodities or the contracting for personal or professional services under this section.

SOURCES: Laws, 1994, ch. 401, § 1; 1997, ch. 609, § 3, eff from and after June 29, 1997.

Amendment Note—

The 1997 amendment designated the former section text as subsection (1) and added subsections (2)-(4).

§ 25-9-127. Prerequisites to dismissal or action adversely affecting compensation or employment status; exceptions.

(1) No employee of any department, agency or institution who is included under this chapter or hereafter included under its authority, and who is subject to the rules and regulations prescribed by the state personnel system may be dismissed or otherwise adversely affected as to compensation or employment status except for inefficiency or other good cause, and after written notice and hearing within the department, agency or institution as shall be specified in the rules and regulations of the State Personnel Board complying with due process of law; and any employee who has by written notice of dismissal or action adversely affecting his compensation or employment status shall, on hearing and on any appeal of any decision made in such action, be required to furnish evidence that the reasons stated in the notice of dismissal or action adversely affecting his compensation or employment status are not true or are not sufficient grounds for the action taken; provided, however, that this provision shall not apply (a) to

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persons separated from any department, agency or institution due to curtailment of funds or reduction in staff when such separation is in accordance with rules and regulations of the state personnel system; (b) during the probationary period of state service of twelve (12) months; and (c) to an executive officer of any state agency who serves at the will and pleasure of the Governor, board, commission or other appointing authority.

(2) The operation of a state-owned motor vehicle without a valid Mississippi driver's license by an employee of any department, agency or institution that is included under this chapter and that is subject to the rules and regulations of the state personnel system shall constitute good cause for dismissal of such person from employment.

SOURCES: Laws, 1994, ch. 523, § 2, eff from and after July 1, 1994.

Amendment Note—

The 1994 amendment added subsection (2), pertaining to prohibiting the operation of a state-owned motor vehicle by an employee that does not have a valid State driver's license.

JUDICIAL DECISIONS

1. In General

After accepting hearing officer's findings of fact, Employee Appeals Board (EAB) improperly set aside termination of Department of Corrections (DOC) employee who had received package from penitentiary post office which contained items normally sent to prisoners and then failed to report package to security or internal affairs as required by DOC policy; such employee was unfit to work for DOC in that she had demonstrated propensity to smuggle packages to criminals, given hearing officer's findings that employee knew package was not hers in that it was of type sent to

inmates and that employee asked co-worker to deliver package to housing unit for inmates, rather than turn it in to her supervisors. *Johnson v. Mississippi Dept. of Corrections* (Miss. 1996) 682 So.2d 367.

Neither hearing officer nor Employee Appeals Board (EAB), which accepted hearing officer's findings, properly allocated burden of proof in employee disciplinary proceeding, where hearing officer required state employer, rather than employee, show that reason for discharge of employee was true. *Mississippi Dept. of Corrections v. McClee* (Miss. 1996) 677 So.2d 732.

§ 25-9-131. Proceedings before employee appeals board; judicial review.

Annotations—

Wrongful discharge based on public policy derived from professional ethics codes. 52 ALR5th 405

Negligent discharge of employee. 53 ALR5th 219.

JUDICIAL DECISIONS

1. In General

Employee Appeals Board (EAB) lacked statutory authority to transfer pending state civil service employment matter to circuit court. statutes creating EAB indicated that EAB's ultimate authority was limited to issuing final decision in which case appellate, as compared to original, jurisdiction of circuit court could be invoked by aggrieved employee to review EAB's decision. *Wright v. White* (Miss. 1997) 693 So.2d 898

State Personnel Board (SPB) rule providing that Employee Appeals Board (EAB)

may not alter action of agency if agency acted in accordance with SPB published policies, rules and regulations does not conflict with statute providing EAB with authority to modify decision of state agency; statute does not provide any guidance as to under what circumstances EAB may modify agency's action, and SPB has statutory authority to make rules and regulations. *Johnson v. Mississippi Dept. of Corrections* (Miss. 1996) 682 So.2d 367.

After accepting hearing officer's findings of fact, Employee Appeals Board (EAB)

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improperly set aside termination of Department of Corrections (DOC) employee who had received package from penitentiary post office which contained items normally sent to prisoners and then failed to report package to security or internal affairs as required by DOC policy; such employee was unfit to work for DOC in that she had demonstrated propensity to smuggle pack-

ages to criminals, given hearing officer's findings that employee knew package was not hers in that it was of type sent to inmates and that employee asked co-worker to deliver package to housing unit for inmates, rather than turn it in to her supervisors. *Johnson v. Mississippi Dept. of Corrections* (Miss. 1996) 682 So.2d 367.

§ 25-9-132. Judicial review of employee appeals board decisions.

JUDICIAL DECISIONS

1. In General

Employee Appeals Board (EAB) lacked statutory authority to transfer pending state civil service employment matter to circuit court; statutes creating EAB indicated that EAB's ultimate authority was limited to issuing final decision in which case appellate, as compared to original, jurisdiction of circuit court could be invoked by aggrieved employee to review EAB's decision. *Wright v. White* (Miss. 1997) 693 So.2d 898.

An appeal from a circuit court order reversing an order of the Employee Appeals Board, which granted a state service em-

ployee's motion to collaterally estop her employer-the Mississippi Department of Corrections (MDOC)-from relitigating factual issues decided in the employee's unemployment claim, would be dismissed for lack of jurisdiction since no appeal to the circuit court by an administrative agency is authorized by § 25-9-132, and the MDOC did not comply with the statutory requisites for certiorari pursuant to §§ 11-51-93 and 11-51-95 where the MDOC filed only a brief in support of review and failed to file a petition supported by affidavit. *Bertucci v. Mississippi Dept. of Corrections* (Miss. 1992) 597 So.2d 643.

§ 25-9-145. Official coercion prohibited; penalties.

Annotations—

Wrongful discharge based on public policy derived from professional ethics codes. 52 ALR5th 405.

§ 25-9-148. Annual report regarding increases in compensation, other than salary increases authorized by Legislature.

Before September 1, 1996, and before September 1 of every year thereafter, the State Personnel Board shall prepare a written report to be submitted to the Chairmen of the House of Representatives Appropriations and Fees and Salaries of Public Officers Committees, the Chairmen of the Senate Appropriations and Fees, Salaries and Administration Committees and the Legislative Budget Office specifically describing every increase in compensation, other than salary increases authorized by the Legislature, or additional compensation that was awarded to any state officer, administrator, executive head, employee or employees during the next preceding fiscal year. For each increase or additional compensation awarded, the report shall include no less than the following information: the annual salary of the officer, administrator, executive head or employee before the increase, the total amount of the increase or additional compensation; the justification for the increase or additional compensation; the effective date of the increase or additional compensation; and the source of the additional compensation, including federal or private funds.

SOURCES. Laws, 1996, ch. 328, § 1, eff. from and after July 1, 1996.
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For assistance, call 1-800-228-1622.

§ 25-9-149. Discriminatory practices prohibited.**Research and Practice References—**

20 Am Jur Proof of Facts 3d 361, Disability Discrimination Under the Americans with Disability Act.

Gerson and Addison, Handicapped discrimination law and the Americans with Disabilities Act. 11 Miss C L Rev 233, Spring, 1991.

Irby, The ADA: the employer's perspective. 11 Miss C L Rev 263, Spring, 1991.

Mikochik, Employment discrimination against Americans with disabilities. 11 Miss C L Rev 253, Spring, 1991.

Annotations—

Judicial construction and application of state legislation prohibiting religious discrimination in employment. 37 ALR5th 349.

Application of state law to age discrimination in employment. 51 ALR5th 1.

Workers' compensation as precluding employee's suit against employer for sexual harassment in the workplace. 51 ALR5th 163.

Who is "employer" within meaning of Age Discrimination in Employment Act of 1967 (29 USCS § 621 et seq.). 137 ALR Fed 551.

Allowance and rates of interest on backpay award under Title VII of Civil Rights Act of 1964 (42 USCS §§ 2000e et seq.). 138 ALR Fed 1.

What constitutes substantial limitation on major life activity of working for purposes of Americans with Disabilities Act (42 USCS §§ 12101-12213). 141 ALR Fed 603.

JUDICIAL DECISIONS**1. In General**

Employer shown to have considered gender in making employment decision was properly required, in federal civil rights action, to prove by preponderance of evi-

dence that decision would have been same absent such consideration. Price Waterhouse v. Hopkins, U.S. Dist. Col. 1989, 109 S.Ct. 1775, 490 U.S. 228, 104 L.Ed.2d 268, on remand.

§ 25-9-153. Operator of state-owned vehicle must have valid state drivers license.

(1) An employee of any state agency, department, board, commission, institution or other instrumentality of the state may not operate a state-owned motor vehicle unless such person has a valid Mississippi driver's license.

(2) A violation of subsection (1) of this section constitutes good cause for dismissal from employment.

SOURCES: Laws, 1994, ch. 323, § 1, eff from and after July 1, 1994.

§ 25-9-155. Nonstate service employees to be given preference for state jobs over general public.

The State Personnel Board shall grant part-time employees, as defined in Section 25-9-107(c)(xi), who are fully qualified, and time-limited employees, as defined in Section 25-9-107(c)(xvi), and all other nonstate service employees, who are fully qualified, preference over general public applicants for state service positions in the same manner that preference is given to employees in the state service, as defined in Section 25-9-107(b), for appointment in the state service.

SOURCES: Laws, 1994, ch. 531, § 1, eff from and after July 1, 1994.